

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

NORDINE'S HEATING AND COOLING SUPPLY
COMPANY, INC.

Employer¹

and

Case 33-RD-871

ANTHONY C. THOENNES, an Individual

Petitioner

and

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION LOCAL UNION NO. 1

Union²

REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION

The Employer, Nordine's Heating and Cooling Supply Company, Inc., with a facility located in Bloomington, Illinois, is engaged in installing fireplaces and heating and cooling equipment. The Petitioner, Anthony C. Thoennes, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union, Sheet Metal Workers' International Association Local Union No. 1, as the collective-bargaining representative of certain employees employed by the Employer. The record discloses that the Union represents two installers. A hearing officer of the Board held a hearing. The Employer and Petitioner appeared at the hearing, but the Union did not appear. No party filed a brief.

¹ The Employer's name appears as amended at hearing.

² The Union's name appears as amended at hearing.

I. CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:³

All full-time and regular part-time sheet metal workers including installers employed by the Employer at its Bloomington, Illinois facility, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act, and all other employees.

II. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote on whether or not they wish to be represented for purposes of collective bargaining by Sheet Metal Workers' International Association Local Union No. 1. The date, time, and place of the election will be specified in the notice of election that the Board's Subregional Office will issue subsequent to this Decision.

³ The unit appropriate in a decertification election must be coextensive with the certified or recognized unit. *Mo's West*, 283 NLRB 130 (1987); *WAPI-TV-AM-FM*, 198 NLRB 342 (1972); *W. T. Grant Company*, 179 NLRB 670 (1969); *Campbell Soup Co.*, 111 NLRB 234 (1955). Here, the unit is not certified. As no party contends that the currently recognized unit is inappropriate, I find it appropriate.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the election, or who have some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.⁴

⁴ Because the Employer is engaged in the construction industry, the eligibility of voters will be determined by the formula in *Daniel Construction Co.*, 133 NLRB 264 (1961), and *Steiny & Co.*, 308 NLRB 1323 (1992).

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in Subregion 33, Hamilton Square, 3000 Hamilton Boulevard, Suite 200, Peoria, Illinois 61602, on or before **August 31, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (309) 671-7095 or by electronic mail at Subregion33@nlrb.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic mail, in which case no copies need be submitted. If you have any questions, please contact Subregion 33.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer shall post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting

requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

III. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m. EDT on **September 7, 2006**. This request may not be filed by facsimile.

E-Filing: In the Subregional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Subregional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

Dated: August 24, 2006
at: Saint Louis, Missouri

/s/ [Ralph R. Tremain]
Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14 and
Subregion 33